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16 UNITED STATES DISTRICT COURT

17 DISTRICT OF NEVADA

18 IN RE GALECTIN THERAPEUTICS, INC.
SECURITIES LITIGATION

Consolidated Civil Action No.:
3:14-CV-399-RCJ-(WGC)

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21 This Document Relates to: ALL ACTIONS

22 **MOTION TO APPOINT ROBERT BURKE AND FREDERICK BROWN AS LEAD**
23 **PLAINTIFF AND APPROVE SELECTION OF LEAD**
24 **AND LIAISON COUNSEL**
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1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that class members Robert Burke and Frederick “Rick” Brown
3 (“Movants” or “Brooke/Brown”) by their counsel, will and hereby do respectfully move this Court
4 for an order: (1) appointing Movants as Lead Plaintiff for the class pursuant to §21D(a)(3)(B) of
5 the Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. §78u-4(a)(3)(B)); and (2)
6 approving their selection of Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) as Lead
7 Counsel and Robison, Belaustegui, Sharp and Low (“RBSL”) as Liaison Counsel.
8

9 This motion is based upon this motion, the supporting memorandum of points and
10 authorities, the declaration of Peter E. Borkon in support thereof, the pleadings and records in each
11 of these actions and such other written or oral argument as may be presented to the Court.
12

13 WHEREFORE, Movants respectfully request that the Court: (1) appoint Movants as the
14 Lead Plaintiff pursuant to Section 21D(a)(3)(B) of the Exchange Act; (2) approve their selection of
15 Lead and Liaison Counsel for the class; and (3) grant such other and further relief as the Court may
16 deem just and proper.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. PRELIMINARY STATEMENT**

19 These consolidated cases are on behalf of all persons who purchased the publicly traded
20 securities of defendant Galectin Therapeutics, Inc. (“Galectin” or the “Company”) between January
21 6, 2014 and July 28, 2014 (the “Class Period”).¹ The complaint alleges violations of sections 10(b)
22 and 20(a) of the Exchange Act as amended by the Private Securities Litigation Reform Act of 1995
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26 ¹ On August 21, 2014, the Court signed an Order consolidating three related federal
securities class actions under the caption noted above. *See* ECF No. 7.

1 (“PSRLA”), 15 U.S.C. §§ 78j(b) and 78 (t)), and Rule 10b-5 promulgated thereunder (17 C.F.R. §
2 240.10b-5).

3 Pursuant to the PSLRA, Movants should be selected as lead plaintiff because, to the best of
4 their knowledge, they have the largest financial interest in the relief sought by the class.² In
5 addition, Burke/Brown satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure
6 because their claims are typical and they will fairly and adequately represent the class’ interests.³
7 In accordance with the PSLRA, Burke/Brown’s selection of Lead and Liaison Counsel should be
8 approved.⁴

9 II. BACKGROUND

10 The complaint charges Galectin and certain of its officers and directors with violations of
11 the Securities Exchange Act of 1934. Galectin is a development stage company engaged in the
12 research and development of therapies for fibrotic disease and cancer. The Company’s lead
13 product candidates include GR-MD-02 to treat non-alcoholic steatohepatitis or NASH, a disease
14 that leads to fatty buildup in the liver and can potentially lead to cirrhosis and/or liver cancer.

15 The complaint alleges that throughout the Class Period, defendants violated the federal
16 securities laws by disseminating false and misleading statements to the investing public about the
17 Company’s business and prospects. As a result of defendants’ false statements, Galectin’s stock
18 traded at artificially inflated prices during the Class Period, reaching a high of \$18.30 per share on
19 February 27, 2014. On July 24, 2014, Emerging Growth Corp. (“Emerging Growth”) disseminated
20 a press release through Accesswire stating that Galectin was “nipping at [the] heels” of its
21 competitors and “actually may be closer than what first appears with a Phase 1 trial because of the
22

23 ² See Declaration of Peter E. Borkon in Support of Burke/Brown’s Motion to Appoint Lead
24 Plaintiff and Approve Selection of Lead and Liaison Counsel (“Borkon Decl.”), filed concurrently
25 herewith; see *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002); *Stocke v. Shuffle Master, Inc.*, No. 07-CV-00715, 2007 U.S. Dist. LEXIS 91535, at *5-*6 (D. Nev. Nov. 30, 2007) (appointing investor with the largest financial interest).

26 ³ See *Shuffle Master*, 2007 U.S. Dist. LEXIS 91535, at *6-*9.

27 ⁴ See 15 U.S.C. §78u-4(a)(3)(B)(v).

potential to treat fatty liver disease even once it has progressed.” Then, on July 28, 2014, an article on SeekingAlpha.com claimed that Galectin had “strong ties to stock promoters” engaging in a misleading brand awareness campaign aimed at boosting its stock price. The same day, a separate article on TheStreet.com revealed that Emerging Growth, through its parent company TDM Financial, a penny-stock promotions firm, was the investor relations and marketing company Galectin was paying for misleading promotional campaigns to entice investors to buy its stock. On this news, Galectin’s stock fell \$8.84 per share to close at \$5.70 per share on July 29, 2014, a one-day decline of nearly 61% on volume of nearly 7.7 million shares.

III. LEGAL ANALYSIS

A. The PSLRA’s Lead Plaintiff Provisions

The PSLRA establishes the procedure for appointment of a lead plaintiff in “each private action arising under [the Exchange Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.”⁵ *First*, the plaintiff who files the initial action must publish a notice to the class within twenty days, informing class members of their right to file a motion for appointment of lead plaintiff.⁶ Here, in connection with the filing of the first-filed action, notice was published on Business Wire on July 30, 2014.⁷ Within sixty days of the publication of notice, any person who is a member of the proposed class may apply to be appointed as lead plaintiff, whether or not they have previously filed a complaint in the action.⁸

Second, the PSLRA provides that within ninety days after publication of notice, courts shall consider any motion made by a class member and shall appoint as lead plaintiff the member of the

⁵ 15 U.S.C. §78u-4(a)(1); *Cavanaugh*, 306 F.3d at 729-30.

⁶ *See* 15 U.S.C. §78u-4(a)(3)(A)(i).

⁷ *See* Borkon Decl., Ex. A.

⁸ *See* 15 U.S.C. § 78u-4(a)(3)(A)(i)(II).

1 class that the court determines to be the most capable of adequately representing the interests of
 2 class members.⁹ In determining the “most adequate plaintiff,” the PSLRA provides that:

3 [T]he court shall adopt a presumption that the most adequate plaintiff in any
 4 private action arising under this [Act] is the person or *group of persons* that –

5 (aa) has either filed the complaint *or made a motion* in response to a notice . . .

6 ;
 7 (bb) in the determination of the court, has the *largest financial interest* in the
 8 relief sought by the class; and

9 (cc) otherwise *satisfies the requirements of Rule 23* of the Federal Rules of
 10 Civil Procedure.¹⁰

11 The time period in which class members may move to be appointed lead plaintiff in this case
 12 expires September 29, 2014.¹¹ Pursuant to the PSLRA’s provisions, and within the requisite time
 13 frame after publication of the required notice, Burke/Brown timely moved this Court to be
 14 appointed as lead plaintiff on behalf of all members of the class.¹² In addition, they have selected
 15 and retained counsel experienced in the prosecution of securities class actions to represent them
 16 and the class.¹³ Accordingly, Burke/Brown satisfy the PSLRA’s filing requirements and are
 17 entitled to have their application for appointment as lead plaintiff considered by the Court.

18 **B. The Burke/Brown Group Is the “Most Adequate Plaintiff”**

19 **1. Burke/Brown Have the Largest Financial Interest in the Relief Sought by the Class**

20 Burke/Brown lost approximately \$71,888.50 in connection with their Class Period
 21 purchases of Galectin common stock. Burke/Brown purchased 8,000 shares of Galectin common
 22

23 ⁹ See 15 U.S.C. §78u-4(a)(3)(B)(i).

24 ¹⁰ 15 U.S.C. §78u-4(a)(3)(B)(iii) (emphasis added); *Cavanaugh*, 306 F.3d at 729-30.

25 ¹¹ See 15 U.S.C. §78u-4(a)(3)(A)-(B).

26 ¹² See *Kuriakose v. Fed. Home Loan Mortg. Co.*, No. 08-cv-7821, 2008 U.S. Dist. LEXIS 95506, at *2 (S.D.N.Y. Nov. 24, 2008).

27 ¹³ See Borkon Decl., Exs. B and C.

1 stock at a cost of \$116,820.10. To the best of their knowledge, this represents the largest known
 2 financial interest in the relief sought by the Class.¹⁴

3 **2. Burke/Brown Satisfy Rule 23**

4 In addition to possessing the largest financial interest, the lead plaintiff must also
 5 “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.”¹⁵
 6

7 While the PSLRA requires that a lead plaintiff meet the requirements of Rule 23(a) at this stage of
 8 the litigation, only a preliminary showing is required with respect to typicality and adequacy.¹⁶

9 Consequently, in deciding motions for appointment of lead plaintiff, the Court should limit its
 10 inquiry to the typicality and adequacy prongs of Rule 23(a), and defer examination of the
 11 remaining requirements until lead plaintiff moves for class certification.¹⁷

12 **a. Burke/Brown are Typical**

13 Under Rule 23(a), the claims or defenses of the representative party must be typical of those
 14 of the class. The typicality requirement is satisfied when the representative plaintiff’s claims arise
 15 from the same event or course of conduct that gives rise to claims of other class members, and
 16 when the claims are based on the same legal theory.¹⁸ However, the claims of the lead plaintiff
 17 need not be identical to the claims of the class to satisfy typicality.¹⁹
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 21 ¹⁴ See *Cavanaugh*, 306 F.3d at 730-32; *Shuffle Master*, 2007 U.S. Dist. LEXIS 91535, at *5-
 *6.

22 ¹⁵ 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc).

23 ¹⁶ See *Teamsters Local 617 Pension & Welfare Funds v. Apollo Grp., Inc.*, No. 06-CV-2674,
 2007 U.S. Dist. LEXIS 67354, at *16-*20 (D. Ariz. Sept. 11, 2007).

24 ¹⁷ See *Shuffle Master*, 2007 U.S. Dist. LEXIS 91535, at *7 (citing *Cavanaugh*, 306 F.3d at
 730 n.5).

25 ¹⁸ See *Crossen v. CV Therapeutics*, No. C 03-03709, 2005 U.S. Dist. LEXIS 41396, at *14
 26 (N.D. Cal. Aug. 10, 2005).

¹⁹ *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

Here, Burke/Brown are typical because, just like all other class members, they: (1) purchased or acquired Galectin securities during the Class Period; (2) purchased Galectin securities in reliance upon the alleged materially false and misleading statements issued by defendants; and (3) suffered damages thereby.²⁰ Thus, Burke/Brown's claims are typical of those of other class members because their claims and the claims of other class members arise out of the same course of events.²¹

b. Burke/Brown are Adequate

Under Rule 23(a), the representative party must "fairly and adequately protect the interests of the class." To determine adequacy, the Court must evaluate: "(1) whether the interests of the class representatives coincide with those of the class, and (2) whether the class representative has the ability to prosecute the action vigorously."²² Here, Burke/Brown are adequate to represent the class. Their interests are aligned with the interests of the class because both suffered from artificial inflation of the price of Galectin securities and would benefit from the same relief. Additionally, there is no evidence of antagonism between Burke/Brown and the class and they have certified their willingness to serve as a class representative.

Burke/Brown have suffered substantial losses as a result of their Class Period purchases of Galectin stock. They are committed to vigorously prosecuting this litigation and maximizing the recovery for the class.²³ Prior to filing this motion, Burke/ Brown conferred with one another, both

²⁰ *See id.*

²¹ *See* 7 Herbert Newberg & Alba Conte, Newberg on Class Actions §22.24, at 107-108 (4th ed. 2002) ("[t]he majority of class actions decisions support the view that when it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is met").

²² *Shuffle Master*, 2007 U.S. Dist. LEXIS 91535, at *8-*9.

²³ *See* Borkon Decl., Exs. D and E.

1 with and outside the presence of chosen counsel and decided to seek appointment as lead plaintiff
 2 jointly. Burke/Brown have a long standing relationship that predates their investment and their
 3 decision to move for lead plaintiff. As a small cohesive group of two investors, they understand
 4 and are committed to managing this litigation and directing their chosen counsel.²⁴ The members
 5 of the group are aware they can choose counsel and have selected their counsel based upon due
 6 diligence. Thus, Burke/Brown satisfy the typicality and adequacy requirements of Rule 23 for
 7 purposes of this motion.²⁵

9 **C. Movants' Choice of Counsel Should be Approved**

10 The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject to the
 11 Court's approval.²⁶ The Court should not disturb lead plaintiff's choice of counsel unless it is
 12 necessary to "protect the interests of the class."²⁷ Burke/Brown have selected Hagens Berman as
 13 Lead Counsel for the class. Hagens Berman is actively engaged in complex litigation and has
 14 successfully prosecuted numerous securities fraud class actions on behalf of injured investors.²⁸

15 If this motion is granted, Hagens Berman will provide members of the class with the
 16 highest caliber of representation available. In addition, RBSL has ample experience in complex
 17 litigation in Nevada and throughout the country.²⁹ Accordingly, the Court should approve
 18 Burke/Brown's selection of Lead Counsel and Liaison Counsel.
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22 ²⁴ *Id.*

23 ²⁵ *Schrivier v. Impac Mortg. Holdings, Inc.*, No. SACV 06-31, 2006 U.S. Dist. LEXIS 40607,
 at *15-16 (C.D. Cal. May 2, 2006).

24 ²⁶ *See* 15 U.S.C. §78u-4(a)(3)(b)(v).

25 ²⁷ 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa); *see also Cavanaugh*, 306 F.3d at 734.

26 ²⁸ *See Borkon Decl.*, Ex. D.

27 ²⁹ *See Borkon Decl.*, Ex. E.

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IV. CONCLUSION

For the foregoing reasons, Burke/Brown respectfully requests that the Court: (1) appoint Burke/Brown as Lead Plaintiff; and (2) approve Burke/Brown's selection of Hagens Berman as Lead Counsel and RBSL as Liaison Counsel.

DATED: September 29, 2014

ROBISON, BELAUSTEGUI, SHARP AND LOW

By /s/ Keegan Low
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Proposed Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2014, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

/s/ Keegan Low
KEEGAN LOW